ABSTRACTS OF RECENT ENGLISH COMMON LAW DECISIONS.

Arbitration—Award—Undue Means.—Where evidence was improperly conveyed to an arbitrator by one party in the absence of the other party, which the arbitrator refused to receive, and stated that he should not suffer it to have any influence on his mind, and afterwards made his award in favor of the party by whom such evidence was conveyed: Held, that the award was good, as being made independent of the improper information. *Stammers* v. *Tomkins*, 8th Nov., 1852. (Exch.)—[ED.]

Bail—Murder—Duelling.—This Court refused to bail the seconds in a duel, though foreigners, where one of the principals was killed, and the seconds had been committed to take their trial for wilful murder, and had confessed to their participation as seconds in a fair duel. The three things, generally speaking, to be considered with reference to taking bail, are the charge, the evidence, and the punishment for the offence. *Reg.* v. *Barronet and Allaine*, 20 L. T. 50. (Q. B.)

Bill of Exchange—Infancy—Presumption that Acceptance was made within a reasonable time after the date of the Bill.—Where a bill of exchange is produced, and the acceptance proved by proof of the handwriting of the acceptor, but no evidence is given as to the date of the acceptance, the jury may infer that it was accepted within a reasonable time after the date of the bill, and this may, in some cases, be taken to be within a few days after the date of the bill. Where, therefore, to an action by an endorsee against the acceptor of a bill of exchange, payable four months after date (the defendant and the drawer both living in the same town), the defendant pleaded "non accepit," and "infancy at the time of the acceptance," and the acceptance was proved to be in the handwriting of the defendant, and it was also proved that the defendant came of age on the last day but one of grace: Held, that the plea of infancy was sufficiently proved. *Roberts* v. *Bethell*, 20 L. T. 80. (C. B.)

Evidence—Advocate and Witness—Plaintiff.—However inconvenient the course may prove in practice, there is nothing in the present state of the law to prevent a plaintiff acting both as advocate and witness in his own cause. It is for the Legislature to interfere, if the adoption of such practice renders an alteration in the law requisite. *Cobbett* v. *Hudson*, 20th Nov., 1852. (Q. B.)—[ED.]

Evidence—Criminal Information—Previous Libellous Publications—Judgment of Foreign Court.—A review published some time before the libel in a criminal information, and containing charges against the prosecutor, alleged to be identical with those in the information, is not admissible on the part of the defendant to show that the prosecutor had silently submitted to them, even when the evidence as to the truth or falsehood of the charges strongly conflicts. Where a judgment of the Court of Inquisition at Rome was put in evidence, and it consisted of two parts—first, the grounds of the statement, which appeared to be the work of a notary, and then the decree of the Court—and the judge directed the jury that it was not to be taken as conclusive evidence of the truth of the facts stated therein: Held, that the direction was right. *Reg.* v. *Newman*, 20 L. T. 94. (Q. B.)

Evidence—Secondary Evidence—Attesting Witness.—The rule of law requiring the evidence of an attesting witness has been gradually relaxed (see Spooner v. Payne, 4 C. B. Rep. 328); and where advertisements have been inserted in newspapers, and reasonable endeavors made to discover the witness, the Court will receive secondary evidence. *Blakeney* v. *Regan*, 8th November, 1852. (C. B.)—[ED.]

Ferry—Liability of Ferryman.—A., lessee of a ferry, received on board of his ferry-boat a mare of B.'s, who kept charge of her on board. Slips for landing were provided by the owner of the ferry; one of these had a damaged handrail, known to the ferryman, which injured the mare: Held, that the ferryman was bound to provide the means of landing; and, having negligently provided a slip with a broken handrail, by reason of which the mare was injured, he was liable for the loss. *Horridge* v. *Willoughby*, 20 L. T. 97; 16 J. P. 761. (C. B.)

Nuisance—Bringing Glandered Mare into Public Place—Indictment—Scienter.—One count of an indictment charged that the defendant had a mare, "infected with a contagious, infectious, and dangerous disease, called the glanders," and that he, "well knowing the premises," whilst the mare was so infected, brought it into a public place and way, where divers liege subjects then were, "to the great danger of infecting with the said contagious, infectious, and dangerous disease," the liege subjects in and near, &c., to the common nuisance, &c., against the peace, &c.: Held, good, after verdict, without an allegation that the defendant knew the glanders to be a disease which was communicable to the human race by infection. *Reg.* v. *Henson*, 20 L. T. 63; 16 J. P. 711. (Q. B.)

Pleading—Agreement—Assignment of Breach—Plea tendering different Issue.—It was agreed that the plaintiff should serve the defendant for seven years, at 100*l.* a year; and if defendant, from any cause, should give up business, or not require plaintiff's services, then that he would use his best endeavors to procure the plaintiff employment in some similar business, of not less than 100*l.* a year; or in case he should be unable to do so, then the defendant should pay the plaintiff 100*l.* a year during the residue of the seven years. Breach in the declaration that the defendant wrongfully discharged the plaintiff during the term, and did not use his endeavors to procure the plaintiff employment, and by means of the premises the plaintiff lost the wages which he otherwise would have obtained, and which the plaintiff refused to pay. Plea, that the defendant was unable to procure the plaintiff such employment: Held, that the breach was well assigned, there being an absolute undertaking by the defendant to use his best endeavors, and that the plea was bad on general demurrer, as tendering a different issue to that proposed by the breach. *Rust* v. *Nottidge*, 20 L. T. 92. (Q. B.)

Pleading—Agreement with Third Person in substitution of Former Agreement.—To a declaration brought on an executory agreement, a plea that the plaintiff and a third person entered into a new agreement for the same purpose, and that the plaintiff received the new agreement in substitution and in satisfaction of the former one, is bad in substance. A. and B. entered into an agreement for the building of a church. Part of the work was done, and B. received an instalment for what he had done. B. then entered into an agreement with C. for completion of the church, and agreed to be paid certain instalments by C., and to look for the rest to subscriptions. This agreement being pleaded by A. in answer to an action by B. against him: Held, that the plea showed no satisfaction, and was bad in substance. *James* v. *Isaac*, 20 L. T. 68. (C. B.)

Pleading—Infancy—Action for Calls.—A plea of infancy to an action for calls on shares should aver that the infant disaffirmed and repudiated the contract within a reasonable time. *Dublin and Wicklow Railway Company* v. *Black*, 20 L. T. 70. (Exch.)

Practice—Inspection of Machinery—Patent—Infringement.—Where an action is brought for the infringement of a patent, the Court will grant an inspection of machinery, and the application for such inspection may be made before declaration is delivered, but such inspection will not be granted

as of course; the party applying must, at least, show that such inspection is material, and really wanted for the purposes of the cause. *Amies* v. *Kelsey*, 25th Nov., 1852. (Bail C., per Crompton, J.)—[ED.]

Prescription—Non-user—Intention.—Whether mere non-user of a right amounts to an abandonment of the right, will depend upon the circumstances which caused the non-user. Therefore, where the use of an immemorial right of way to a close was discontinued, because the occupiers had a more convenient access to it over another close in their occupation: Held: that the non-user afforded no evidence of an intention to abandon the right. *Ward* v. *Ward*, 21 L. J. 334. (Exch.)

Sheriff—Remaining in Possession an unreasonable Time—Trespass.—A sheriff taking possession under a writ of *fi. fa.*, and remaining in possession an unreasonable time, is liable to an action of trespass. (See Playfair v. Musgrove, 14 M. & W. 239.) *Ash* v. *Dawnay*, 20 L. T. 103. (Exch.)

Ship and Shipping—Carrier by Sea—Damage by Rats.—Where goods put on board a ship to be carried by sea, for hire, under a bill of lading which contains only the usual exception, viz., "The act of God, the queen's enemies, fire, and all other dangers and accidents of the seas, rivers, and navigation, &c., excepted," are damaged by rats during the voyage, it is no defence to an action by the owner of the goods that the master had kept cats on board. *Semble*, it would be a defence that rats had made a hole in the ship, through which water came in and injured the goods. *Laveroni* v. *Drury*, 16 Jur. 1024. (Exch.)

Slander—Privileged Communication—Absence of Malice.—A director of a company having learned, in his capacity of director of another company, that the plaintiff had been dismissed from the office of secretary of the said company, on the ground of gross misconduct, stated this at the board of the first mentioned company, and, in answer to a question from the chair, said that the charges were for obtaining money under false pretences, and for giving an I. O. U. for a petty cash debt. At a subsequent meeting, held for the purpose of investigating the conduct of the plaintiff, he refused, in the presence of the plaintiff and his attorney, to state the charges against him. An action had been commenced against the other company, of which he was a director, by the plaintiff: Held, that the communication was privileged; and that the conduct of the defendant being consistent with bona fides, that must be presumed; and

that the case ought to have been withdrawn from the jury. *Harris* v. *Thompson*, 20 L. T. 99. (C. B.)

Statute of Frauds—Foreign Contract—Lex loci.—A foreign parol contract not to be performed within a year, but good according to the lex loci, cannot be enforced by an action in this country. A., by a parol agreement in France, engaged B. to collect eggs for him, and consign them to him in England, at a salary of 100*l.* per annum. B. brought an action in this country against A., for not taking him into his service as agreed; to which A. pleaded non assumpsit: Held, that such action would not lie; that the 4th section of the Statute of Frauds was applicable to procedure, and not to the solemnities of the contract itself, and did not make a foreign contract void, so as to be contrary to the comity of nations, but only prohibited an action being brought upon it in this country. (See Crosby v. Wadsworth, 6 East, 611.) *Leroux* v. *Brown*, 20 L. T. 68; 16 Jur. 1021. (C. B.)

Witness—Evidence—Questions tending to Self-crimination—Propriety of Judge's Interference.—In an action on a bill of exchange, the defence was, that the money for which the bill was given had been lost in a gambling transaction. The person who let the room in which the gambling took place was asked a question tending, if answered, to render him liable to an indictment under Stat. 8 & 9 Vict. c. 109, when the judge interposed. The Court, on a motion for a new trial, on the ground of misdirection, held the judge to have been right, and the rule was refused. *Fisher* v. *Ronalds*, 20 L. T. 100. (C. B.)—[*Selected from Lovell's Digest.*]

OBITUARY.

THE LATE HORACE BINNEY WALLACE, ESQ.[1]

Recent letters from Paris communicate the death of HORACE BINNEY WALLACE, Esq., in that city, on the 16th December last, at the age of thirty-five; and the Bar of Philadelphia, of which he was a member, have

[1] NOTE. The Editors of the Law Register had intended to prepare a notice of their friend and fellow-member of the Bar; but the accompanying classic and just sketch, prepared by an accomplished hand for private distribution, causes no regret that their duty is unperformed. The friends of Mr. Wallace have kindly consented to the publication, in the pages of our journal, of this eloquent and beautiful tribute to the memory of a finished scholar and jurist, though it was not written to meet the general public eye.